

CHAPTER 15

GENERAL PROVISIONS

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15.01 RULES OF CONSTRUCTION

In the construction of this code of general ordinances, the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the ordinance:

- (1) **Wisconsin Statutes** The term Wisconsin Statutes wherever used in this code shall mean the Wisconsin Statutes for the year 1996.
- (2) **Gender: Singular and Plural** Every word in this code and in any ordinance importing the masculine gender may extend and be applied to females as well as males, and every word importing the singular number only may extend and be applied to several persons or things as well as to one person or thing; provided that these rules of construction shall not be applied to any provisions which shall contain any express language excluding such construction or when the subject matter or context of such provisions may be repugnant thereto.
- (3) **Person** The word "person" extends and applies to natural persons, firms, corporations, partnerships or other bodies politic and all entities of any kind capable of being sued unless plainly inapplicable.
- (4) **Acts by Agents** When a provision requires an act to be done which may by law as well be done by an agent as by the principal, such requisition shall be construed to include all such acts when done by an authorized agent.

15.02 CONFLICT AND SEPARABILITY

- (1) **Conflict of Provisions** If the provisions of the different chapters of this code conflict with or contravene each other, the provisions of each chapter shall prevail as to all matters and questions arising out of the subject matter of such chapter.

- (2) **Separability of Code Provisions** If any section, subsection, sentence, clause or phrase of this code is for any reason held to be invalid or unconstitutional by reason of any decision of any court of competent jurisdiction, such decision shall not affect the validity of any other section, subsection, sentence, clause or phrase or portion thereof. The City Mayor and City Council of the City of Augusta hereby declare that they would have passed this code and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

15.03 CLERK TO FILE DOCUMENTS INCORPORATED BY REFERENCE

Whenever in this code any standard, code, rule, regulation or other written or printed matter, other than the Wisconsin Statutes or other sections of this code, are adopted by reference, they shall be deemed incorporated in and required to file, deposit and keep in his/her office a copy of the code, standard, rule, regulation or other written or printed matter as adopted. Materials so filed, deposited and kept shall be public records open for examination with proper care by any person during the Clerk's office hours, subject to such orders or regulations which the Clerk may prescribe for their preservation.

15.035 ISSUANCE OF CITATIONS

- (1) Law Enforcement Officers may issue citations authorized under this code of ordinances.
- (2) The Fire Chief is authorized to issue citations for violations of ordinances which are directly related to his official responsibilities. Additionally, the Fire Chief may delegate his authority to issue citations to one other member of the Fire Department who shall act as a Fire Inspector.
- (3) Citations issued under this section shall contain the following information:
- (a) The name and address of the alleged violator.
 - (b) The factual allegations describing the alleged violation.
 - (c) Time and place of the offense.
 - (d) The section of the ordinance violated.
 - (e) A designation of the offices in such manner as can be readily understood by a person making a reasonable effort to do so.
 - (f) The time at which the alleged violator may appear in court.
 - (g) A statement which in essence informs the alleged violator:
 - (1) That the alleged violator may make a cash deposit of a specified amount to be mailed to a specified official with a specified time.
 - (2) That if the alleged violator makes such a deposit, he or she need not

appear in court unless subsequently summoned.

(3) That if the alleged violator makes a cash deposit and does not appear in court, either he or she will be deemed to have tendered a plea of no contest and submitted to a forfeiture and a penalty assessment imposed by §165.87 not to exceed the amount of the deposit or will be summoned into court to answer the complaint if the court does not accept the plea of no contest.

(4) That if the alleged violator does not make a cash deposit and does not appear in court at the time specified, an action may be commenced against the alleged violator to collect the forfeiture and the penalty assessment imposed by §165.87.

(h) A direction that if the alleged violator elects to make a cash deposit, the alleged violator shall sign an appropriate statement which accompanies the citation to indicate that he or she read the statement required under sub. (7) and shall send the signed statement with the cash deposit.

(i) Such other information as may be deemed necessary.

(4) The citations issued under this section shall be in a form substantially identical to that which has been designated by the Wisconsin Department of Transportation and the BadgerTRACS software system.

(5) Reserved for future use.

(6) Reserved for future use.

15.04 PENALTY PROVISIONS

(1) Persons subject to penalty when.

Whenever so provided in this code, any person who violates any of the provisions of this code shall, upon conviction of said violation, be subject to a penalty as set forth in Sections 15.04(1)-15.04(5).

(2) First offense penalty.

Any person who violates any provision of this code subject to a penalty shall, upon conviction thereof, forfeit not less than one dollar nor more than five hundred dollars, together with the costs of prosecution, and in default of payment of such forfeiture and costs of prosecution shall be imprisoned in the county jail until said forfeiture and costs are paid, but not exceeding ninety-six days. No person shall be imprisoned under this section if there is a showing that he is indigent. In the event that any other chapter or section of this code provides for a specific penalty for violation of specific code provisions, that specific penalty provision shall be followed for violations of said provision.

(3) Second and subsequent offense penalty.

Any person found guilty of violating any provision of this code who shall previously have been convicted of a violation of the same provision shall, upon conviction thereof, forfeit not less than ten dollars nor more than one thousand dollars for each such offense, together with the costs of prosecution, and in default of payment of said forfeiture and costs shall be imprisoned in the county jail until said forfeiture and costs of prosecution are paid, but not to exceed six months. No persons shall be imprisoned under this section if there is a showing that he is indigent. In the event that any other chapter or section of this code provides for a specific penalty for violation of specific code provisions, that specific penalty provision shall be followed for violations of said provisions.

(4) Continuing offenses.

Whenever a person or entity violates any code provisions through a continuing course of conduct, failure to act, or in any other continuing manner, each and every day of said continuing violation shall be considered a separate and individual violation of this code, and said person or entity shall be subject to prosecution and penalties for each and every such individual violation.

(5) Cash deposit schedules.

Pursuant to Wisconsin Statutes, the city does adopt the following as its cash deposit schedules for violations of city ordinances:

- (a)** For violations of ordinances adopting state statutes covered by Uniform Deposit Schedules published by the Wisconsin Judicial Conference or other duly empowered state agencies, the city adopts the deposit schedules so published and as amended by said agencies from time to time.
- (b)** For violations of other city ordinances, cash deposits, plus court costs established by duly empowered state agencies, shall be accepted pursuant to a bond schedule passed by city council resolution. Revisions to said schedule shall be made by city council resolution, and an updated copy of the bond schedule shall be available for public inspection at the police department during regular office hours.

Council amended November 2021

15.05 REPEAL OF GENERAL ORDINANCES

All ordinances heretofore adopted by the City Council of the City of Augusta are hereby repealed, except all ordinances or parts of ordinances relating to the following subjects and not conflicting with any of the provisions of this code.:

The issuance of corporate bonds and notes of the City of Augusta of whatever name or description.

The establishment of grades, curb line and widths of sidewalks in the public streets and alleys.

The fixing of salaries of public officials and employees.

Rights, licenses or franchises or the creation of any contract with the City of Augusta.

The lighting of streets and alleys.

The annexation of territory to the City of Augusta.

The naming and changing of names of streets, alleys, public grounds and parks.

The letting of contracts without bids.

Tax and special assessment levies.

Release of persons, firms or corporations from liability.

Construction of any public works.

Water, sewer and electric rates, rules and regulations and sewer and water main construction.

Budget ordinances, resolutions and actions.

15.06 EFFECT OF REPEALS

The repeal or amendment of any section or provision of this code or of any other ordinance or resolution of the City Council shall not:

- (1) By implication be deemed to revive any ordinance not in force or existing at the time at which such repeal or amendment takes effect:
- (2) Affect and vested right, privilege, obligation or liability acquired, accrued under any enactment so repealed or amended unless the privilege of repealing such obligation or privilege has been reserved by the City.
- (3) Affect any offense committed or penalty or forfeiture incurred, previous to the time when any ordinance shall be repealed or amended, except that when any forfeiture or penalty shall have been mitigated by the provisions of any ordinance, such provisions shall apply to and control any judgment to be pronounced after such ordinance takes effect for any offense committed before that time.
- (4) Affect any prosecution for any offense, or the levy of any penalty or forfeiture pending at the time when any ordinance aforesaid shall be repealed or amended, but the right of action shall continue and the offender shall be subject to the penalty as provided in such ordinances, and such prosecution shall proceed, in all respects, as if such ordinance or ordinances had not been repealed, except that all such proceedings had after the time this code shall take effect, shall be conducted according to the provisions of this code, and shall be, in all respects, subject to the provisions of this code.

15.07 TITLE: EFFECTIVE DATE: CITATION

These ordinances shall be known as the "Municipal Code of the City of Augusta" and shall take effect from and after passage and publication. All references thereto shall be cited by section number.

15.08 STYLE OF ORDINANCES: ADDITIONS, AMENDMENTS & REPEALS

All general ordinances hereafter enacted by the City Council of the City of Augusta shall be numbered in chronological order, prefixed by the letter "A" and shall indicate by appropriate decimal number the section, subsection or paragraph of this code created, amended, repealed or revised.

15.09 CLERK TO FILE ORDINANCES: SUPPLEMENTAL SHEETS

The City Clerk shall certify one copy of this code as the original Municipal Code of the City of Augusta and shall file the same as part of the City Ordinance Book. Such copy shall be retained in its original form. In addition, the Clerk shall retain in his/her office at least one copy of the Municipal Code of the City of Augusta in current form in which shall be inserted all supplemental sheets as hereinafter provided.

Whenever any ordinance amending, repealing, revising or creating any section of this code is adopted by the City Council, the City Clerk, after recording such ordinance in the ordinance book, shall cause copies of such ordinance to be reproduced on supplemental sheets in proper form for insertion in the municipal code and shall insert such ordinances in all copies of this code in his possession except the aforementioned original copy. The Clerk shall make supplemental sheets available at a fee specified by the City Council to all persons requesting the same.

15.10 PUBLIC RECORDS

(1) **Definitions:** In this chapter, unless the context clearly requires otherwise:

- (a) "Authority" means any of the following entities having custody of a city record: an office, elected official, agency, board, commission, committee, council, department of public body corporate and politic created by construction, law, ordinance, rule or order; or a formally constituted subunit of the foregoing.
- (b) "Custodian" means that officer, department head, division head, or employee of the city designated under subsection 3 or otherwise responsible by law to keep and preserve any city records or file, deposit or keep such records in his or her office, or is lawfully in possession or entitled to possession of such public records and who is required by this chapter to respond to requests for access to such records.
- (c) "Record" means any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics which has been created or is being kept by an authority.

“Record” includes, but is not limited to, handwritten, typed or printed pages, maps, charts, photographs, films, recordings, tapes (including computer tapes), and computer printouts. “Records” does not include drafts, notes, preliminary computations and like materials prepared for the originator’s personal use or prepared by the originator in the name of a person for whom the originator is working; materials which are purely the personal property of the custodian and have no relation to his or her office; materials to which access is limited by copyright, patent or bequest; and published materials in the possession of an authority other than a public library which are available for sale, or which are available for inspection at a public library.

(2) Duty to Maintain Records

- (a)** Except as provided under subsection 1, each officer and employee of the city shall safely keep and preserve all records received from his or her predecessor or other persons and required by law to be filed, deposited or kept in his or her office or which are in the lawful possession or control of the officer or employee or his or her deputies, or to the possession or control of which he or she or they may be lawfully entitled as such officers or employees.
- (b)** Upon the expiration of an officer’s term of office or an employee’s term of employment, or whenever the office or position of employment becomes vacant, each such officer or employee shall deliver to his or her successor all records then in his or her custody and the successor shall receipt therefore to the officer or employee, who shall file said receipt with the city clerk. If a vacancy occurs before a successor is selected or qualifies, such records shall be delivered to and receipted for by the clerk, on behalf of the successor, to be delivered to such successor upon the latter’s receipt.

(3) Legal Custodians

- (a)** Each elected official is the legal custodian of his or her records and the records of his or her office, but the official may designate an employee of his or her staff to act as the legal custodian.
- (b)** Unless otherwise prohibited by law, the city clerk or the clerk’s designee shall act as legal custodian for the city council and for any committees, commissions, boards, or other authorities created by ordinance or resolution of the city council.
- (c)** For every authority not specified in subsections 3 and 3(a), the authority’s chief administrative officer is the legal custodian for the authority, but the officer may designate an employee of his or her staff to act as the legal custodian.
- (d)** Each legal custodian shall name a person to act as legal custodian in his or her absence or in the absence of his or her designee.
- (e)** The legal custodian shall have full legal power to render decisions and to carry out the duties of an authority under subchapter II of Chapter 19, Wisconsin Statutes, and this section. The designation of a legal custodian shall not affect the

powers and duties of an authority under this section.

(4) Public Access to Records

- (a)** Except as provided in subsection 6, any person has a right to inspect a record and to make or receive a copy of any record as provided in Wis. Stat. §19.35(1).
- (b)** Records shall be available for inspection and copying during all regular office hours.
- (c)** If regular office hours are not maintained at the location where records are kept, the records will be available for inspection and copying upon at least 48 hours' advance notice of intent to inspect or copy.
- (d)** A requester shall be permitted to use facilities comparable to those available to city employees to inspect, copy or abstract a record.
- (e)** The legal custodian may require supervision during inspection or may impose other reasonable restrictions on the manner or access to an original record if the record is irreplaceable or easily damaged.
- (f)** A requester shall be charged a fee to defray the cost of locating and copying records as follows:
 - (1)** The fee for photocopying shall be \$0.25 per page or such other amount as prescribed in Section 11.10 of this Code. Other costs may be imposed not to exceed the actual, necessary and direct cost of reproduction and transcription of the record.
 - (2)** If the form of a written record does not permit copying the actual and necessary cost of photographing and photographic processing shall be charged.
 - (3)** The actual full cost of providing a copy of other records not in printed form on paper, such as films, computer printouts and audio or video tapes, shall be charged.
 - (4)** If mailing or shipping is necessary, the actual cost thereof shall also be charged.
 - (5)** There shall be no charge for locating a record unless the actual cost therefore exceeds \$50.00, in which case the actual cost shall be determined by the legal custodian and billed to the requester. Such actual cost shall be derived by multiplying the actual hourly wage of the employee or employees conducting the search, including fringe benefits, by the amount of time spent in the search.
 - (6)** The legal custodian shall estimate the cost of all applicable fees and may

require a cash deposit adequate to assure payment, if such estimate exceeds \$5.00.

- (7) Elected and appointed officials of the city of Augusta shall not be required to pay for public records they may reasonably require for the proper performance of their official duties.
- (8) The legal custodian may provide copies of a record without charge or at a reduced charge where he or she determines that waiver or reduction of the fee is in the public's interest.
- (g) Pursuant to Wis. Stat. §19.34, and the guidelines therein listed, each authority shall adopt, prominently display and make available for inspection and copying at its offices, for the guidance of the public, a notice containing a description of its organization and the established times and places at which the legal custodian from whom, and the methods whereby, the public may obtain information and access to records in its custody, make requests for records, or obtain copies of records, and the costs thereof. This subsection does not apply to members of the city council.

(5) Access Procedures

- (a) A request to inspect or copy a record shall be made to the legal custodian. A request shall be deemed sufficient if it reasonably describes the requested record or the information requested. However, a request for a record without a reasonable limitation as to subject matter or length of time represented by the record does not constitute a sufficient request. A request may be made orally, but a request must be in writing before an action to enforce the request is commenced under Wis. Stat. §19.37. Except as provided below, no request may be refused because the person making the request is unwilling to be identified or to state the purpose of the request. No request may be refused because the request is received by mail, unless prepayment of a fee is required under subsection 4. A requester may be required to show acceptable identification whenever the requested record is kept at a private residence or whenever security reasons or federal law or regulations so require.
- (b) Each custodian, upon request, shall as soon as possible and without delay, either fill the request or notify the requester of the authority's determination to deny the request in whole or in part and the reasons therefore. If the legal custodian, after conferring with the city attorney, determines that a written request is so general as to be unduly time consuming, the party making the request may first be required to itemize his or her request in a manner which would permit reasonable compliance.
- (c) A request for a record may be denied as provided in subsection 6. If a request is made orally, the request may be denied orally unless a demand for a written statement of the reasons denying the request is made by the requester within 5 business days of the oral denial. If a written request is denied in whole or in part, the requester shall receive a written statement of the reasons for denying the

request. Every written denial of a request shall inform the requester that if the request for the record was made in writing, then the determination is subject to review upon petition for a writ of mandamus under Wis. Stat. §19.37(1), or upon application to the attorney general or a district attorney.

(6) Limitations on Right to Access

- (a) As provided by Wis. Stat. §19.36 the following records are exempt from inspection under this section:
- (1) Records specifically exempted from disclosure by state or federal law.
 - (2) Any record relating to investigative information obtained for law enforcement purposes if federal law or regulations requires exemption from disclosure or if exemption from disclosure is a condition to receipt of aids by the state.
 - (3) Computer programs, although the material used as input for a computer program or the material produced as a product of the computer program is subject to inspection.
 - (4) A record or any portion of a record containing information qualifying as a common law trade secret.
- (b) As provided by Wis. Stat. §43.30 public library circulation records are exempt from inspection under this section.
- (c) In responding to a request for inspection or copying of a record which is not specifically exempt from disclosure, the legal custodian, after conferring with the city attorney, may deny the request, in whole or in part, only if he or she determines that the harm to the public interest resulting from disclosure would outweigh the public interest in full access to the requested record. Examples of matters for which disclosure may be refused include, but are not limited to, the following:
- (1) Records obtained under official pledges of confidentiality which were necessary and given in order to obtain the information contained in them.
 - (2) Records of current deliberations after a quasi-judicial hearing.
 - (3) Records of current deliberations concerning employment, dismissal, promotion, demotion, compensation, performance, or discipline of any city officer or employee, or the investigation of charges against a city officer or employee, unless such officer or employee consents to such disclosure.
 - (4) Records containing current strategy for crime detection or prevention.
 - (5) Records of current deliberations or negotiations on the purchase of city property, investing of city funds, or other city business whenever competitive or bargaining reasons require nondisclosure.

- (6) Financial, medical, social or personal histories or disciplinary data of specific persons which, if disclosed, would be likely to have a substantial adverse effect upon the reputation of any person referred to in such history or data.
 - (7) Communications between legal counsel for the city and any officer, agent, or employee of the city, when advice is being rendered concerning strategy with respect to current litigation in which the city or any of its officers, agents or employees is or is likely to become involved, or communications which are privileged under Wis. Stat. §905.03.
- (d) If a record contains information that may be made public and information that may not be made public, the custodian of the record shall provide the information that may be made public and delete the information that may not be made public from the record before release. The custodian shall confer with the city attorney prior to releasing any such record and shall follow the guidance of the city attorney when separating out the exempt material. If in the judgment of the custodian and the city attorney there is no feasible way to separate the exempt material from the nonexempt material without unreasonably jeopardizing nondisclosure of the exempt material, the entire record shall be withheld from disclosure.

(7) **Destruction of Records**

- (a) The City of Augusta hereby adopts, by reference, the Wisconsin Municipal Records Schedule (hereinafter “WMRS”), pertaining to the retention and destruction of public records, as approved by the State of Wisconsin Public Records Board (hereinafter “Records Board”) on August 27, 2018, as revised on June 15, 2020, and all future versions of said schedule; and when the record is not contained within the WMRS, in conformation with the Records Board or other General Records Schedules (hereinafter “GRS”). Copies of the WMRS and GRS (hereinafter “Records Schedule”) will be kept on file in the City Clerk’s Office located at 145 W. Lincoln St., Augusta, Wisconsin.

City officers are authorized to destroy or transfer the following records under their jurisdiction in accordance with the WMRS, after the completion of any audit required by state law. Such records provided for in the WMRS include, but are not limited to the following, and may be adjusted based on the WMRS:

(1) **Administrative Records**

- Administration (general)
- Common Council/Village Board/Town Board
- Emergency Planning
- Human Resources/Personnel
- Legal
- Licenses and Permits
- Municipal Land Ownership

Municipal Vehicles
Payroll
Real Property Titles

(2) Cemetery Records

(3) Community Development/Public Services

Housing Program
Outreach
Parks
Public Transportation
Sanitation

(4) Election Records

Ballots and Equipment
Campaign
Reports and Lists

(5) Finance Records

Budget
Fiscal/Municipal Borrowing/Payments and Receipts
Purchasing

(6) Public Works

Building Inspection
Engineering
Maintenance and Operations
Planning and Zoning
Utilities

(7) Revenue Records

Assessment
Board of Review
Special Assessment
Tax Calculation and Collection

- (b)** City officers are authorized to destroy Municipal Court Records under their jurisdiction in accordance with Wisconsin SCR Chapter 72 (Retention and Maintenance of Court Records), after the completion of any required audit under state law.
- (c)** City officers are authorized to destroy Utility Records under their jurisdiction after the completion of any required audit under state law, in accordance with Wis. Admin. Code ch. PSC 113.0614 and other applicable regulation, as amended or revised.

- (d) Other records. In the event the City creates a record not contemplated by the Records Schedule, the City may, subject to the Records Board's prior approval, either adopt an applicable records retention schedule set forth by the Records Board, if available, or create its own retention schedule pertaining to the record.
 - (e) Wisconsin Historical Society notification. Prior to the destruction of any public record described in Wis. Stats. § 19.21(4)(a), (b), or (c), at least 60 days' notice, in writing, shall be given to the Wisconsin Historical Society (hereinafter "WHS") unless the requirement is waived in the Records Schedule.
 - (e) Unless notice is waived by the state historical society, at least 60 days' notice shall be given the state historical society prior to the destruction of any record as provided by Wis. Stat. §19.21(4)(a).
 - (f) Any tape recordings of a governmental meeting of the city, made by the city, may be destroyed, erased or reused as provide by Wis. Stat. §19.21(7) after the minutes of the meeting have been approved and published, if the purpose of the recording was to make minutes of the meeting.
 - (g) Any tape recordings of telephone calls, radio transmissions or other methods of communication recorded in the city's communications center may be erased, destroyed or reused after 125 days.
 - (h) Closed call records associated with the computer aided dispatch (CAD) system in the city's communication center may be deleted and destroyed after 120 days.
 - (i) Repeal. All ordinances, or portions thereof, and resolutions, or portions thereof, in conflict with any portion of the Records Schedule are hereby repealed. Any approved City retention schedule, or portion thereof, for any record not contemplated by the Records Schedule shall remain in full force and effect.
- (8) **Lesser Time When Authorized** This Section shall not be construed to authorize the destruction of any public record after a period less than prescribed by statute or state administrative regulations.
- (9) **Preservation Through Microfilm** Any city officer or the director of any department or division of city government may, subject to the approval of the city manager, keep and preserve public records in his or her possession by means of microfilm or other photographic reproduction method. Such records shall meet the standards for photographic reproduction set forth in Wis. Stat. §16.61(7)(a) and (b), and shall be considered original records for all purposes. Such records shall be preserved along with other files of the department or division and shall be open to public inspection and copying according to the provisions of state law and of subsections 4 through 6.